United Nations A/HRC/27/48

General Assembly

Distr.: General
30 June 2014

Original: English

Human Rights Council
Twenty-seventh session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Arbitrary Detention

Chair-Rapporteur: Mads Andenas

Summary

During 2013, the Working Group on Arbitrary Detention, under its regular procedure, adopted 60 opinions concerning the detention of 431 persons in 39 countries (see A/HRC/27/48/Add.1). It also transmitted a total of 110 urgent appeals to 37 States concerning 680 individuals. States informed the Working Group that they had taken measures to remedy the situation of detainees: in some cases, detainees had been released; in other cases, the Working Group was assured that the detainees concerned would be guaranteed a fair trial. The Working Group is grateful to those Governments that heeded its appeals and took steps to provide it with the requested information on the situation of detainees. The Working Group engaged in continuous dialogue with countries that it visited, particularly concerning its recommendations. Information regarding the implementation of recommendations made by the Working Group was received from the Governments of Georgia and Senegal. During 2013, the Working Group visited Brazil, Greece, Hungary and Morocco. The reports on those visits are contained in addenda 2, 3, 4 and 5 to the present report.

Pursuant to Human Rights Council resolution 20/16 adopted on 6 July 2012, the Working Group has initiated the preparations concerning the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful. The draft basic principles and guidelines are intended to assist Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty. The Working Group has prepared a specific report on national, regional and international laws, regulations and practices relating to the right to challenge the lawfulness of detention before a court (A/HRC/27/47). A report comprising the draft basic principles and guidelines will be submitted to the Human Rights Council in 2015.

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In its recommendations, the Working Group requests States to enforce the protection of every person's right to liberty under customary international law; to ensure that the required guarantees and safeguards are extended to all forms of deprivation of liberty; and to ensure that persons are not held in pretrial detention for periods longer than those prescribed by law, as well as ensuring that such persons are promptly brought before a judge. With respect to the thematic issues addressed in this report, the Working Group recommends that the practice of protective custody should be eliminated and replaced with alternative measures that ensure the protection of women and girls without jeopardizing their liberty. It also calls on States to ensure that preventive detention is proportionate and justified by compelling reasons and that detention of asylum seekers and irregular migrants is used a last resort only for the shortest period of time. The detention should be subject to regular periodic reviews by an independent judicial body and the legality of detention must be open to challenge before a court. The Working Group also requests the Human Rights Council to study the adoption of a set of principles to be applied to military courts.

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I. Introduction

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty, according to standards set forth in the Universal Declaration of Human Rights and relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. At its sixth session, the Human Rights Council assessed the mandate of the Working Group and in resolution 6/4 confirmed its scope. On 26 September 2013, in its resolution 24/7, the Council extended the Working Group's mandate for a further three-year period.

2. During 2013, the Working Group was composed of Shaheen Sardar Ali (Pakistan), Mads Andenas (Norway), Roberto Garretón (Chile), El Hadji Malick Sow (Senegal) and Vladimir Tochilovsky (Ukraine).

3. Between 1 January 2013 and 12 November 2013, El Hadji Malick Sow was the Chair-Rapporteur of the Working Group and Shaheen Sardar Ali its Vice-Chair. On 13 November 2013, Mads Andenas was elected Chair-Rapporteur of the Working Group and Vladimir Tochilovsky was elected Vice-Chair.

II. Activities of the Working Group in 2013

4. During the period from 1 January to 31 December 2013, the Working Group held its sixty-sixth, sixty-seventh and sixty-eighth sessions. It undertook official missions to Greece (21–31 January 2013), Brazil (18–28 March 2013), Hungary (23 September–2 October 2013) and Morocco (9–18 December 2013). See addenda 2, 3, 4 and 5, respectively, for the country visit reports.

5. In November 2011, the Working Group launched a database, accessible at www.unwgaddatabase.org, which is a freely and publicly available compilation of its opinions on individual cases of detention. The database provides over 600 opinions in English, French and Spanish that have been adopted since the establishment of the Working Group in 1991. During 2013, the database was consulted by some 3,000 visitors in different regions of the world. The database provides a practical research tool for victims, lawyers, academics and others who would like to prepare and submit cases of alleged arbitrary deprivation of liberty to the Working Group.

6. Pursuant to Human Rights Council resolution 20/16, the Working Group initiated preparations concerning the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful.

7. The Working Group, by means of a questionnaire, sought the views of States, relevant United Nations agencies, intergovernmental organizations, United Nations treaty bodies, in particular the Human Rights Committee, other special procedures, national human rights institutions, non-governmental organizations and other relevant stakeholders. The Working Group has so far received replies to its questionnaire from 44 States, 20 national human rights institutions, 3 regional entities, 8 non-governmental organizations, 5 special procedures mandate holders and the Human Rights Committee.

8. In addition to the present report, the Working Group is submitting to the Human Rights Council a specific report on national, regional and international laws, regulations and practices relating to the right to challenge the lawfulness of detention before court. That report is based on information obtained from stakeholders and on the Working Group's additional review of relevant regional and international legal frameworks (A/HRC/27/47).

9. On 1 and 2 September 2014, the Working Group will hold a consultation with stakeholders in relation to the preparation of the first draft of basic principles and guidelines on remedies and procedures on the right to challenge the lawfulness of detention before court. A final report comprising the outcome of the stakeholders' consultation and the draft basic principles and guidelines will be submitted to the Human Rights Council in 2015.

A. Handling of communications addressed to the Working Group during 2013

1. Communications transmitted to Governments

10. Hyperlinks to a description of the cases transmitted and the contents of the replies of Governments can be found in the related opinions adopted by the Working Group (see A/HRC/27/48/Add.1).

11. During its sixty-sixth, sixty-seventh and sixty-eighth sessions, the Working Group adopted 60 opinions concerning 431 persons in 39 countries. Some details of those opinions are provided in the table below. The hyperlinks to the complete texts of opinions Nos. 1/2013 to 60/2013 are contained in addendum 1 to the present report.

2. Opinions of the Working Group

12. Pursuant to its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group, in addressing its opinions to Governments, drew their attention to resolutions 1997/50 and 2003/31 of the former Commission on Human Rights and resolutions 6/4 and 24/7 of the Human Rights Council, in which they were requested to take account of the Working Group's opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of a two-week deadline, the opinions were transmitted to the relevant sources.

Opinions adopted during the sixty-sixth, sixty-seventh and sixty-eighth sessions of the Working Group

Opinion No.	*Country*	*Government's reply*	*Government's reply or information submitted after the adoption of opinions*	*Person(s) concerned*	*Opinion*
1/2013	Tunisia	No	No	Abdelwahed Abdallah	Detention arbitrary, categories I and III
2/2013	Barbados	Yes	-	Raoul Garcia	Detention arbitrary, categories III and IV
3/2013	Morocco	Yes	-	Abdessamad Bettar	Detention arbitrary, categories I and III

Opinion No.	*Country*	*Government's reply*	*Government's reply or information submitted after the adoption of opinions*	*Person(s) concerned*	*Opinion*
4/2013	Uzbekistan	Yes	-	Gaybullo Jalilov	Detention arbitrary, categories II, III and V
5/2013	Turkmenistan	Yes	-	Maksat Kakabaev and Murad Ovezov	Detention arbitrary, category II
6/2013	Turkey	Yes	-	250 detained defendants in the Balyoz or Sledgehammer cases	Detention arbitrary, category III
7/2013	Romania	No	No	Ikechukwu Joseph Ojike	Case filed
8/2013	Russian Federation	Yes	-	Denis Matveyev	Detention arbitrary, categories II and III
9/2013	Sri Lanka	Yes	-	Santhathevan Ganesharatnam	Detention arbitrary, category III
10/2013	United States of America	No	Yes	Mr. Obaidullah	Detention arbitrary, categories I, III and V
11/2013	Tajikistan	Yes	-	Ilhom Ismailovich Ismonov	Detention arbitrary, category III
12/2013	Bahrain	Yes	-	Nabeel Abdulrasool Rajab	Detention arbitrary, categories II and III
13/2013	Switzerland	Yes	-	Mohamed El Ghanam	Detention not arbitrary (paragraph 17 (a) of the methods of work)
14/2013	Burundi	No	No	Joseph Kalimbiro Ciusi, Mutambala Swedi Fataki, Mpahije Félix Kasongo, Jacques Obengi Songolo and Maneno Tundula	Case pending on additional information from the Government or the source (paragraph 17 (c) of the methods of work)
15/2013	Comoros	No	No	Mohamed Amiri Salimou	Case filed (person released) (paragraph 17 (a) of the methods of work)
16/2012	Panama	No	No	Oscar Pompilio Estrada Laguna and Norberto Monsalve Bedoya	Detention arbitrary, categories I and III
17/2013	Cuba	Yes	-	Ulises Gonzàlez Moreno	Detention arbitrary, categories II and III

Opinion No.	*Country*	*Government's reply*	*Government's reply or information submitted after the adoption of opinions*	*Person(s) concerned*	*Opinion*
18/2013	Iran (Islamic Republic of)	No	No	Saeed Abedinigalangashi	Detention arbitrary, categories II, III and V
19/2013	Morocco	Yes	-	Mohamed Dihani	Detention arbitrary, category III
20/2013	Argentina	No	Yes	Guillermo Luis Lucas	Detention arbitrary, category III
21/2013	Mexico	No	No	Juan García Cruz and Santiago Sánchez Silvestre	Detention arbitrary, category III
22/2013	Turkmenistan	Yes	-	Gulgeldy Annaniyazov	Detention arbitrary, categories II and III
23/2013	France	Yes	-	Georges Ibrahim Abdallah	Detention not arbitrary (paragraph 17 (b) of the methods of work)
24/2013	Cambodia	No	No	Yorm Bopha	Detention arbitrary, category II
25/2013	Morocco	No	Yes	Ali Aarrass	Detention arbitrary, category III
26/2013	Viet Nam	Yes	-	Francis Xavier Dang Xuan Dieu, Peter Ho Duc Hoa, John the Baptist Nguyen Van Oai, Anthony Chu Manh Son, Anthony Dau Van Doung, Peter Tran Huu Duc, Paulus Le Van Son, Hung Anh Nong, John the Baptist Van Duyet, Peter Nguyen Xuan Anh, Paul Ho Van Oanh, John Thai Van Dung, Paul Tran Minh Nhat, Mary Ta Phong Tan, Vu Anh Binh Tran and Peter Nguyen Dinh Cuong	Detention arbitrary, categories II, III and V
27/2013	United Arab Emirates	No	Yes	Rami Shaher Abdel Jalil Al Mrayat	Detention arbitrary, category III
28/2013	Iran (Islamic Republic of)	No	Yes	Amir Nema Hekmati	Detention arbitrary, category III
29/2013	Tunisia	No	Yes	Jabeur Mejri	Detention arbitrary, category II

Opinion No.	*Country*	*Government's reply*	*Government's reply or information submitted after the adoption of opinions*	*Person(s) concerned*	*Opinion*
30/2013	Uzbekistan	Yes	-	Yuri Korepanov	Case filed (person released) (paragraph 17 (a) of the methods of work)
31/2013	Paraguay	No	No	Lucía Agüero Romero, Felipe Nery Urbina Gamarra, Luis Olmedo Paredes, Arnaldo Quintana, Alcides Ramírez Paniagua, Juan Carlos Tillaría, Richard Ariel Barrios Cardozo, Felipe Benítez Balmori, Adalberto Castro, Néstor Castro, María Fanny Olmedo, Dolores López Peralta and Arnaldo Quintana	Case pending of additional information from the Government and the source (paragraph 17 (c) of the methods of work)
32/2013	Saudi Arabia	No	No	Khaled Al-Omeir	Detention arbitrary, categories I, II and III
33/2013	Viet Nam	Yes	-	Le Quoc Quan	Detention arbitrary, category III
34/2013	Democratic People's Republic of Korea	Yes	-	Kim Im Bok, Kim Bok Shil, Ann Gyung Shin, Ann Jung Chul, Ann Soon Hee and Kwon Young Guen	Detention arbitrary, categories I, II and III
35/2013	Democratic People's Republic of Korea	Yes	-	Choi Seong Jai, Hong Won Ok, Kim Seong Do, Kim Seong Il, Lee Hak Cheol, Lee Gook Cheol, Kim Mi Rae, and Lee Jee Hoon	Detention arbitrary, categories I, II and III
36/2013	Democratic People's Republic of Korea	Yes	-	Choi Sang Soo, Choi Seong II, Kim Hyeon Sun, Kim Geong Il and Park Sung Ok	Detention arbitrary, categories I, II and III
37/2013	Bangladesh	No	No	Adilur Rahman Khan	Detention arbitrary, categories II and III
38/2013	Cameroon	No	Yes	Michel Thierry Atangana Abega	Detention arbitrary, categories I, II and III
39/2013	Egypt	No	Yes	Mohamed Mohamed Morsi Eissa El-Ayyat, Ahmed Abdel Atty, Essam Al- Haddad, Khaled El-Kazaz, Abdelmageed Meshali, Asaad El-Sheikha and Ayman Ali	Detention arbitrary, category III

Opinion No.	*Country*	*Government's reply*	*Government's reply or information submitted after the adoption of opinions*	*Person(s) concerned*	*Opinion*
40/2013	Uzbekistan	Yes	No	Abdumavlon Abdurakhmonov	Case filed (person released) (paragraph 17 (a) of the methods of work)
41/2013	Libya	No	Yes	Saif Al-Islam Gaddafi	Detention arbitrary, category III
42/2013	United Arab Emirates	No	No	Abdullah Al Hadidi	Detention arbitrary, categories I and II
43/2013	Syrian Arab Republic	No	No	Mazen Darwish, Mohamed Hani Al Zaitani and Hussein Hammad Ghrer	Detention arbitrary, categories II and III
44/2013	Saudi Arabia	No	No	Yahya Hussein Ahmad Shaqibel	Detention arbitrary, categories I, II and III
45/2013	Saudi Arabia	Yes	-	Mohammad Salih Al Bajadi	Detention arbitrary, category II
46/2013	Saudi Arabia	No	No	Abdulkarim Al Khodr	Detention arbitrary, category II
47/2013	Venezuela (Bolivarian Republic of)	Yes	-	Antonio José Rivero González	Detention arbitrary, categories II and III
48/2013	Sri Lanka	No	Yes	Varnakulasingham Arulanandam	Detention arbitrary, categories I and III
49/2013	Myanmar	No	No	Tun Aung (a.k.a. Nurul Haque)	Detention arbitrary, categories II, III and V
50/2013	Myanmar	Yes	No	Laphai Gam	Detention arbitrary, categories II, III and V
51/2013	Bangladesh	No	No	Rizvi Hassan	Detention arbitrary, category III
52/2013	Iran (Islamic Republic of)	No	No	Khosro Kordpour and Massoud Kordpour	Detention arbitrary, categories II and III
53/2013	Jordan	No	No	Hisham Al Heysah, Bassem Al Rawabedah, Thabet Assaf and Tarek Khoder	Detention arbitrary, categories II and III
54/2013	Morocco	Yes	-	Mustapha El Hasnaoui	Detention arbitrary, categories II and III
55/2013	Iran (Islamic Republic of)	No	No	Bahman Ahamdi Amouee	Detention arbitrary, categories II and III

Opinion No.	*Country*	*Government's reply*	*Government's reply or information submitted after the adoption of opinions*	*Person(s) concerned*	*Opinion*
56/2013	Myanmar	Yes	-	Ko Htin Kyaw	Detention arbitrary, category II
57/2013	Djibouti, Sweden and the United States of America	Yes: (Sweden); No: (Djibouti and United States of America)	No	Mohamed Yusuf and Ali Yasin Ahmed.	Case filed concerning Sweden. Concerning Djibouti and the United States of America: detention arbitrary, categories I and III
58/2013	Mexico	Yes	-	Marco Antonio de Santiago Ríos	Case pending on additional information from the Government and the source (paragraph 17 (c) of the methods of work)
59/2013	Azerbaijan	Yes	-	Hilal Mammadov	Detention arbitrary, categories II and III
0/2013	United Arab Emirates	No	No	61 individuals: Ahmed Ghaith Al Suwaidi, Ahmed Al Zaabi, Ali Al Hammadi, Ibrahim al Marzooqi, Hassan Al Jabiri, Husain Al Jabiri, Shaheen Alhosani, Sultan Bin Kayed Al Qasimi, Saleh Al-Dhufairi, Salim Sahooh, Ahmed Al Tabour Al Nuaimi, Khalid Al Sheiba Al-Nuaimi, Mohamed Al Mansoori, Husain Al-Najjar Al Hammadi, Abdulrahman Al-Hadidi, Rashid Omran Al Shamsi, Essa Al-Sari Al Muhairi, Mohamed Abdullah Al-Roken, Salim Hamdoon Al Shahi, Juma Darwish Al-Felasi, Tariq Al-Qasim, Saif Al Egleh, Hamad Roqait, Abdulraheem Al-Zarooni, Musabeh Al-Rumaithi, Tariq Hassan Al-Qattan Al Harmoudi,	Detention arbitrary, categories I, II and III

Opinion No.	*Country*	*Government's reply*	*Government's reply or information submitted after the adoption of opinions*	*Person(s) concerned*	*Opinion*
				Saeed Nasser Al-Wahidi, Ali Abdullah Mahdi Saleh, Abdulsalam Darwish Al Marzooqi, Khalid Mohammed Alyammahi, Ahmed Saqer Alsuwaidi, Saif Aletr Al Dhanhan, Hassan Mohammed Al Hammadi, Fuad Mohammed Al Hammadi, Ahmed Saif Almatri, Najeeb Amiri, Abdulaziz Hareb, Abdullah Al-Jabiri, Ali Abdulla Alkhaja, Rashid Khalfan Bin Sabt, Ali Salim Al Awad Al-Zaabi, Ali Saeed Al-Kindi, Hadif Al-Owais, Mohammed Al-Abdouli, Salem Mousa Farhan Alhalyan, Ahmed Hajji Al-Qobaisi, Ahmed Hassan Al-Rostomani, Ahmed Knyed Al-Muhairi, Ismael Abullah Al-Hosani, Khaled Fadel Ahmed, Ali Muhammad Al Shahi, Essa Khalifa Al Suwaidi, Abdulrahim Abdallah Al Bestaky, Muhammad Abdulrazzaq Al Abdouly, Khalifa Hillel, Ibrahim Ismail Al Yaqoub, Amrane Ali Hassan Al Harithi, Mahmoud Hassan Al Houssani, Abdallah Abdelqader Al Hajiri, Mansoor Ahmad Al Ahmady, Fahd Abdelqader Al Hajiri.	

3. Reactions from Governments concerning previous opinions

13. By note verbale dated 1 February 2013, the Permanent Mission of Sri Lanka to the United Nations Office at Geneva reported that Gunasundaram Jayasundaram, who was the subject of opinion No. 38/2012 (Sri Lanka), was indicted in November 2012 under section 5 of the Prevention of Terrorism Act before the High Court of Vavuniya (case No. HC/2424/12). The Sri Lankan law enforcement authorities are investigating more serious charges against him. They are in touch with the Singaporean authorities in relation to mutual legal assistance matters. Mr. Jayasundaram pleaded guilty to the charge against him and was convicted pursuant to his pleas. The High Court of Vavuniya sentenced him to one month's simple imprisonment.

14. With respect to opinion No. 26/2012, the Permanent Mission of Sri Lanka to the United Nations Office at Geneva reported that Pathmanathan Balasingam had admitted his

participation in attacks against security forces as a member of the Liberation Tigers of Tamil Eelam (LTTE). He was indicted before the Anuradhapura High Court under the Prevention of Terrorism Act (case No. HC.185/2011). Concerning Vijiyanthan Seevaratnam, the Government reported that he had joined LTTE, undergone military training at Wattakachch base and used anti-aircraft missile guns. The Attorney General has offered him rehabilitation as an alternative to criminal prosecution.

15. The Permanent Mission of Sri Lanka to the United Nations Office at Geneva, in relation to opinion No. 49/2011 (Sri Lanka), reported that Jegasothy Thamotharampillai and Sutharsini Thamotharampillai had been detained under Emergency Regulation 19, paragraph 1. They were indicted before the Colombo High Court and pleaded guilty. On 20 October 2011, they were sentenced to one year and to three months' imprisonment, respectively.

16. By note verbale dated 14 February 2013, the Permanent Mission of Togo to the United Nations Office at Geneva submitted its Government's observations to opinion No. 41/2012 (Togo) concerning Sow Bertin Agba.

17. The Permanent Mission of Iraq to the United Nations Office at Geneva submitted brief information on 18 persons mentioned in opinion No. 43/2012 (Iraq).

18. The Permanent Mission of Saudi Arabia to the United Nations Office at Geneva submitted information concerning Khaled Abdulrahman Al-Twijri and Abdulaziz Nasser Abdallah Al Barahim, who were the subjects of opinion No. 8/2012 (Saudi Arabia). It reported that all the allegations concerning Mr. Al-Twijri were inaccurate. He was arrested on charges of harbouring; failing to report and providing services for wanted persons; leaving Saudi Arabia illegally using forged documents; and adopting the ideology and policy of the Al-Qaida organization. Mr. Al Barahim was duly informed of the charges brought against him and was allowed to contact his family and receive visits in accordance with article 116 of the Criminal Procedure Code. He did not request the appointment of legal counsel.

19. By letter dated 11 July 2013, the Acting Deputy Permanent Representative of the United States of America to the United Nations Office at Geneva reported that Mr. Obaidullah, an Afghan national detained at the United States Naval Station at Guantánamo Bay and the subject of opinion No. 10/2013 (United States of America), was being detained pursuant to the Authorization for Use of Military Force (public law 107-40, sect. 2 (a)), as informed by the law of war, in the ongoing armed conflict with Al-Qaida, the Taliban and associated forces. According to the Government, Mr. Obaidullah's detention is not penal in nature; he is being detained under the law of war to prevent his return to hostilities against the United States for the duration of those hostilities. Mr. Obaidullah has availed himself of the opportunity to challenge his military detention in the United States federal court system. He petitioned the Supreme Court to review his case but that petition was denied on 24 June 2013. On 7 March 2011, the President of the United States issued Executive Order 13567 establishing a new process of periodic review for the detainees at Guantánamo Bay who are designated for continued detention under the law of war or referred for prosecution but not yet charged or convicted. Mr. Obaidullah is eligible to receive a periodic review under that process. Each detainee, aided by his representative, is permitted to participate in the review process by presenting a written or oral statement, introducing relevant information and answering any question. Additionally, the detainee may call reasonably available witnesses.

20. By note verbale dated 3 December 2012, the Permanent Mission of Belarus to the United Nations Office at Geneva stated that opinion No. 39/2012 (Belarus) on the detention of Aleksandr Viktorovich Bialatski was biased, non-authoritative and politically motivated (see A/HRC/22/G/2). According to the Government, Mr. Bialatski has been condemned for committing a serious punishable offence involving tax evasion on a particularly large scale

and not for his fundraising activities for the organization Viasna. The sentence imposed on him cannot be seen as a violation of article 20, paragraph 1, of the Universal Declaration of Human Rights or of article 22 of the International Covenant on Civil and Political Rights.

21. By note verbale dated 25 October 2013, the Permanent Mission of Argentina to the United Nations Office at Geneva reported, with respect to the detention of Guillermo Luis Lucas, that domestic remedies had not been exhausted. The intervention of an international body would thus be premature.

22. By note verbale dated 24 September 2013, the Permanent Mission of Morocco to the United Nations Office at Geneva reported that Ali Aarrass was sentenced in the first instance, on 24 November 2011, to 15 years' imprisonment. In October 2012, that sentence was commuted to 12 years' imprisonment. He was sentenced on the basis of articles 293, 294 and 295 of the Penal Code (criminal association and assistance to criminals) and of article 218-1, paragraph 9 (participation in an association formed or in an agreement oriented to the preparation of the commission of an act of terrorism). The court has not yet ruled upon Mr. Aarrass's appeal. The Government assures the Working Group that all measures will be taken to give Mr. Aarrass the benefit of medical examinations. Instructions will be given to ensure that his fundamental rights as a detainee are respected.

Release of subjects of the Working Group's opinions

23. The Working Group received information from Governments and sources on the release of the following subjects of its opinions:

- Nasrin Sotudeh, an Iranian human rights lawyer who was the subject of opinion No. 21/2011 (Islamic Republic of Iran), was released on 18 September 2013 along with 10 other political prisoners
- The Government of Saudi Arabia reported that Salman Mohamed Al Fouzan was currently at liberty (opinion No. 8/2012 (Saudi Arabia))
- It also reported that Saeed Muhammad Eid Al Khamissi, whose detention was also considered arbitrary by opinion No. 8/2012 (Saudi Arabia), was sentenced by the court of first instance to a term of five years' imprisonment, confiscation of the items seized and a travel ban for the same period. The Public Prosecutor filed an objection to that judgement, which is being reviewed by the Appeal Court. In the meantime, the person is at liberty
- On 17 March 2014, a source reported that Guillermo Luis Lucas had been released (opinion No. 20/2013 (Argentina))
- Israel Arzate Meléndez, who was the subject of opinion No. 67/2011 (Mexico), was released on 6 November 2013, pursuant to the judgement of the First Chamber of the Supreme Court of Justice of the Nation
- Michel Thierry Atangana Abega, who was the subject of opinion No. 38/2013 (Cameroon), was released pursuant to a presidential decree on 24 February 2014. On 29 April 2014, Mr. Atangana and his representatives travelled to Geneva and met with the members of the Working Group during its sixty-ninth session. They expressed their gratitude for the Working Group's opinion and indicated that the Government of Cameroon had not yet implemented the two remaining recommendations of the Working Group, on investigation and compensation. They further stressed the effectiveness of the Working Group's opinions in ending the practice of arbitrary detention

24. The Working Group expresses its gratitude to those Governments that took positive action and released detainees who were subjects of its opinions.

4. Requests for review of opinions adopted

25. The Working Group considered the concerned Governments' requests for review of the following opinions: opinion No. 46/2012 (Guatemala), opinion No. 62/2012 (Ethiopia) and opinion No. 37/2012 (Spain). After carefully and closely examining the requests for review, the Working Group rejected the requests for review, in accordance with paragraph 21 of its methods of work (A/HRC/16/47, annex, and Corr.1).

5. Reprisal against a subject of an opinion of the Working Group

26. The Working Group expresses its concern regarding the continued detention under house arrest of Maria Lourdes Afiuni Mora, the subject of its opinion No. 20/2010 (Bolivarian Republic of Venezuela), who was arrested in 2009 for ordering the conditional release of Eligio Cedeño, the subject of the Working Group's opinion No. 10/2009 (Bolivarian Republic of Venezuela). The Working Group considers the action against Ms. Afiuni as a measure of reprisal. It calls on the Government of the Bolivarian Republic of Venezuela to immediately release Ms. Afiuni and to provide her with effective reparations.

6. Communications (urgent appeals and other letters)

27. During the period from 1 January 2013 to 31 December 2013, the Working Group sent 110 urgent appeals to 37 countries concerning 680 individuals. Urgent appeals were sent to the following countries:

> Angola (1); Azerbaijan (2); Bahrain (4); Bangladesh (4); Belarus (1); Cambodia (1); China (10); Colombia (1); Egypt (7); Equatorial Guinea (3); India (2); Iran (Islamic Republic of) (13); Iraq (5); Israel (2); Italy (1); Kazakhstan (1); Mexico (1); Morocco (1); Myanmar (9); Nigeria (3); Oman (1); Panama (1); Saudi Arabia (6); Somalia (1); State of Palestine (1); the Sudan (5); Syrian Arab Republic (1); Tajikistan (1); Tunisia (1); Turkey (3); Ukraine (1); United Arab Emirates (3); United States of America (1); Venezuela (Bolivarian Republic of) (2); Viet Nam (5); Yemen (3) and Zimbabwe (1).

The full text of the urgent appeals can be consulted in the joint reports on communications.[1]

28. In conformity with paragraphs 22 to 24 of its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to them to take the necessary measures to ensure that the detained persons' rights to life and to physical integrity were respected.

29. When the appeal made a reference to the critical state of health of certain persons or to particular circumstances, such as failure to execute a court order for release, the Working Group requested the Government concerned to take all necessary measures to have the person concerned released. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council relating to urgent appeals and has since applied them.

30. During the period under review, the Working Group also sent two letters of allegation to Nigeria and Sudan, pursuant to the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council.

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[1] For urgent appeals sent from 1 December 2012 to 28 February 2014, see A/HRC/23/51, A/HRC/24/21, A/HRC/25/74, A/HRC/26/21.

31. The Working Group wishes to thank those Governments that heeded its appeals and took steps to provide it with information on the situation of the persons concerned, especially the Governments that released those persons. In other cases, the Working Group was assured that the detainees concerned would receive fair trial guarantees.

B. Country visits

1. Requests for visits

32. The Working Group has been invited to visit Argentina (a follow-up visit), Azerbaijan, Burkina Faso, Germany (a follow-up visit), India, Italy (a follow-up visit), Japan, Libya, Malta (a follow-up visit), Nauru, Spain and the United States of America. With respect to Nauru, the Working Group was invited by the Government to visit the country from 14 to 19 April 2014 and regrets that the Government cancelled the visit on 24 March 2014 owing to unforeseen circumstances. The alternative dates for the visit in 2014 are under discussion and the Working Group looks forward to closely working with the Government of Nauru in organizing the visit.

33. The Working Group has also asked to visit Algeria, Bahrain (a follow-up visit), Egypt, Ethiopia, Fiji, Guinea-Bissau, Nicaragua (a follow-up visit limited to Bluefields), Papua New Guinea, the Philippines, the Russian Federation, Saudi Arabia, the Syrian Arab Republic, Thailand, Turkmenistan, Uzbekistan and the Bolivarian Republic of Venezuela.

2. Follow-up to country visits of the Working Group

34. In accordance with its methods of work, the Working Group decided in 1998 to address a follow-up letter to the Governments of countries it had visited, requesting information on initiatives the authorities might have taken to give effect to recommendations adopted by the Working Group contained in the reports on its country visits (E/CN.4/1999/63, para. 36).

35. In 2013, the Working Group requested information from Georgia and Germany, countries it had visited in 2011. It had previously also requested information from Armenia, Italy, Malaysia and Senegal. It received information from the Governments of Georgia, Italy and Senegal.

Georgia

36. The Government of Georgia informed the Working Group of the measures taken in compliance with the recommendations issued in the Working Group's report on its official mission to Georgia in 2011 (A/HRC/13/30/Add.2).

37. The Government of Georgia referred to the recommendation concerning the right of the detainee to be immediately informed of all his or her rights at the moment of the arrest. It reported that defendants must be released immediately if they were not informed upon arrest of their rights provided for in article 174 of the Criminal Procedure Code and were not given a copy of an arrest record. Statistical data provided by the Supreme Court of Justice shows that first instance courts had been using deprivation of liberty extensively up until 2013. However, that trend seems to be changing and alternative measures have started to prevail. The percentage of measures taken that order deprivation of liberty has fallen from 50.2 per cent in 2011, to 44.4 per cent in 2012 and 26.4 per cent during the first nine months of 2013. The percentage of cases heard in which bail was ordered increased to 37 per cent. The use of bail has now outstripped the use of deprivation of liberty.

38. The Public Defender of Georgia and representatives of his Office, as well as representatives of the International Committee of the Red Cross, have the right to freely

enter temporary detention isolators without any authorization. The 2013 Development Strategy for the Ministry of Internal Affairs of Georgia acknowledges the importance of monitoring those isolators, inter alia, through independent oversight bodies. A ministerial order of 17 May 2013 approved a new Police Code of Ethics and a directive for staff at those isolators. At the beginning of 2013, the duration of the basic training courses for police officers was doubled from three to six months and those courses include human rights subjects in their curricula. New methods for testing and interviewing candidates have been introduced. Riot, patrol, border and criminal police officers must be retrained periodically in order to improve their qualifications, particularly in the human rights area.

39. During the period 2012–2013, 146 investigations were launched into cases of ill-treatment cases; 48 persons were prosecuted, including the former head of the Penitentiary Department and several directors of prisons; 21 persons have been convicted. During the first nine months of 2013, 74 meetings with prisoners were held in various penitentiary facilities. Nine investigations for bodily injury were launched following prisoners' applications. A variety of mechanisms for raising concerns and the transmission of complaints are available to detainees. The Prosecutor's Office of Georgia, the Public Defender's Office and the General Inspectorate of the Ministry of Internal Affairs can be contacted at any moment.

40. The Government further reported that the duration of basic training courses for officers of the Patrol Police Department and the Border Police have been extended from 12 to 20 weeks and from 6 to 14 weeks, respectively. The courses are aimed at ensuring proper protection of the human rights of asylum seekers and other persons in need.

41. The first set of procedural law amendments aimed at enhancing the principle of adversariality were drafted in 2012. In accordance with the Working Group's recommendation, the amendments are aimed at ensuring equality of arms between the defence and the prosecution in criminal proceedings. The amendments to the Criminal Procedure Code were submitted to the Parliament of Georgia in June 2013. A new code on administrative offences is being drafted.

Senegal

42. The Government of Senegal reported that the rule of habeas corpus is well present in the criminal legislation of Senegal. Article 91 of the Constitution makes the judiciary the guardian of rights and freedoms. The principle of the independence of the judiciary is established in its article 88. The assistance of a lawyer is mandatory only in criminal matters. A legal aid fund is available.

43. Following a judgement in a criminal matter, a detainee may be sentenced to alternative prison measures (*contrainte par corps*), in addition to the award of damages and interest to the civil party, or fines. That applies in criminal matters exclusively, however, and never in civil cases. Alternative prison measures (*contrainte par corps*) are carefully regulated by the Criminal Procedure Code in its articles 7.9 and following.

44. The Organic Law of 2008 on the Supreme Court provides in its article 4 for the establishment of a commission to compensate persons who have spent several years in preventive detention. However, no regime has been formulated to regulate the application of the law.

45. The decree regulating prisons provides for disciplinary cells reserved for recalcitrant inmates and disruptive prisoners. In Senegal, detainees are subjected to disciplinary measures only exceptionally, however. The police misconduct which marked the 2012 presidential election campaign is currently the subject of judicial proceedings. A dozen gendarmes and police officers are being held in places of detention.

46. In total, there are 331 licensed lawyers and 33 interns. The Ministry of Justice reported that it was soon to undertake consultations with the Bar Association on how to guarantee broad access to the legal profession and to promote the presence of lawyers in the most remote regions of the country. The Ministry of Justice plans to increase the number of judges in the regional and district courts.

47. In criminal matters, the length of preventive detention is not yet limited. For ordinary offences, it is limited to six months, except in cases of the misappropriation of public funds. With regard to migrants, the time limit for administrative detention is between 15 and 30 days.

48. Like judges responsible for the execution of sentences, investigating judges must visit the detainees whom they have placed in detention.

49. The Government further reported that the prison administration had plans to build homes for women accused of infanticide, a detention centre with 1,500 places in Sébikotane, 40 kilometres from Dakar, and six regional facilities with 500 places each.

Italy

50. The Government of Italy informed the Working Group of the measures taken to implement the recommendations issued in the Working Group's report on its official visit to Italy in November 2008 (A/HRC/10/21/Add.5).

51. The Government of Italy referred to the recommendation concerning the need to shorten the duration of criminal trials with a view to ensuring better protection of the right to be tried without undue delay. It provided information on the enactment of a number of new laws and the introduction of regulatory changes designed to limit the use of remand in custody.

52. With regard to the recommendation to thoroughly investigate incidents of police brutality and to hold those responsible accountable, the Government reported that a strong normative framework had been designed in order to ensure provisions adequate to the service performed by the police forces. Each and every case/incident is duly and promptly investigated. More generally, training activities, including human rights-related courses, have been introduced for all law enforcement agencies, and prison staff are provided with relevant training and given frequent refresher courses. Reference is made to article 582 of the Criminal Code on the ill-treatment of persons deprived of their liberty, under which proceedings are often brought for the misconduct of law enforcement officials, even in cases of minor injuries. A system monitoring all critical events, including any injuries suffered by inmates, has been instituted. The Prison Administration Department provides information to all prison facilities on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). In addition, the establishment of a national ombudsman/guarantor of the rights of detainees and prisoners is currently pending approval by the Senate.

53. According to the Government, article 41 bis of Act No. 354 of 1975 (Penitentiary Act) provides for a regime of restrictions for prisoners from the upper echelons of mafia, terrorist or subversive criminal organizations. A total of 716 persons are currently subject to that regime, which has been strengthened by Act No. 94 of 2009. The Minister of Justice adopts a provision applying the regime, which lasts for four years and can be extended for an additional period of two years. The restrictions under the regime cannot be modified either by the administrative authority or the judicial authority, since they are established by the law.

54. With regard to measures for asylum seekers and persons entitled to international protection, Italy has adopted a strategy consisting of a number of initiatives aimed at, inter alia, ensuring their integration locally and strengthening the existing system. In that context, various measures to receive asylum seekers and refugees have been adopted, including reception centres and local-based projects for their protection system.

55. As regards the administrative detention of foreigners for the purpose of establishing their identity, article 14 of Legislative Decree No. 286/1998 provides for the adoption of a reasoned decree, of which the person concerned is to be notified and regarding which he or she can be heard, in person or through a legal counsel, before the judicial authority. The above measure is reported within 48 hours to the competent magistrate to be validated. A hearing is held in the presence of a legal counsel and the result thereof shall be promptly communicated to the person concerned. The foreign national enjoys the right to a defence, including free legal aid, and, if necessary, an interpreter. The court shall rule within 48 hours. The validation by the court entails the identification of the person concerned and a mandatory stay for that person in a reception centre for a period of 30 days, extendable by reasoned request for up to a maximum of 18 months, pursuant to Act No. 129/2011 which extended the maximum term of detention in a reception centre from 6 to 18 months. In that regard, the Vice-Minister of the Interior declared very recently that the Government intended to drastically reduce that term. More specifically, the Constitutional Court has never objected to the Italian system of detention in reception centres: the Italian legislation is in line with European Union directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.

56. The Government reported that the complaints against Italy for violations related to expulsions of foreign citizens were numerous and that there had been an increase in the number of expulsions made on a preventive basis. Indeed, complaints related to judicial expulsions, including expulsions carried out as a security measure, constitute one third of those enforcing an administrative measure. The European Court of Human Rights has handed down several judgments on the subject, 14 of which found a violation, 4 of which concerned an alleged violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms for expulsions enforcing a judicial decision and 10 concerned administrative expulsions. In its response, the Government provided a comprehensive legal analysis of the matter.

57. With regard to the juvenile justice system, the Government reported that the changes to the Italian legal framework begun in 1988 had led to a new organizational structure and new management of the juvenile justice administrative services. The Department of Juvenile Justice, consisting of central and local administration offices, ensures the execution of the penal provisions of the juvenile court with a view to the social and occupational reintegration of children in conflict with the law, as provided for in article 27 of the Italian Constitution. The Government reported on a number of measures taken to improve the system and the various types of facilities for juvenile offenders.

58. The Government also reported that the process of closing the judicial psychiatric hospitals had started on 1 April 2008 with the Decree of the President of the Council of Ministers that transferred the responsibility for the penitentiary health-care service to the regions. In accordance with legislative decree No. 24 of 25 March 2013, the deadline for the closure of the judicial psychiatric hospitals had been postponed until 1 April 2014, in order to allow the regions to establish substantive health-care facilities and to arrange individual treatment and rehabilitation paths.

3. Terms of reference for country visits by the Working Group

59. At its sixty-ninth session, held from 22 April to 1 May 2014, the Working Group reviewed terms of reference for country visits which are designed to clarify the Working

Group's methods of work pertaining to the preparation and organization of, and follow-up to, its country visits. The Working Group intends to share the terms of reference with the Coordination Committee of Special Procedures for its consideration and to make them publicly available on the Working Group's web page. It is hoped that the terms of reference will enhance the transparency, visibility and understanding of the Working Group's country visits.

C. Follow-up to the joint study on secret detention

60. The Working Group has considered how it can contribute to the follow-up of the joint study on secret detention (A/HRC/13/42) within its mandate and will continue that consideration in 2014. It has discussed that with the current holders of other special mandates taking part in the joint study or otherwise having an interest in it or the follow-up. The Working Group will also address the follow-up to its own previous reports and opinions on detention and antiterrorism measures, taking account of subsequent developments, including the length of detention of individuals subject to indeterminate detention regimes.

D. Prevention of imminent arbitrary deprivation of liberty

61. The Working Group has continued its deliberations in situations where an individual is at risk of being arrested on an arrest warrant or detention order being issued against him or her and where the resulting deprivation of liberty is likely to be arbitrary in nature.

62. Under the Working Group's current methods of work, there is no mechanism addressing situations where there is sufficiently reliable information that the execution of an order of arrest will result in arbitrary depravation of liberty. In effect, the Working Group currently has to wait until the arrest warrant is executed and the person is arbitrarily detained.

63. A mechanism might be applicable in situations when an individual is to be arrested solely because he or she has exercised the fundamental rights or freedoms guaranteed by international human rights law. Similarly, it could apply in situations where an imminent arrest would constitute a violation of international law prohibiting discrimination based on national or ethnic origin, religion, political or other opinion, gender, sexual orientation or other status, and which might result in the equality of human rights being ignored.

64. If such a preventive mechanism was available to the Working Group, then section V of its methods of work (urgent action procedure) would apply mutatis mutandis to the consideration of communications on imminent arbitrary deprivation of liberty.

65. As to action on communications in that category, two options can be considered: (a) if the Working Group considered that the imminent detention was not of an arbitrary nature, it would render an opinion to that effect, such an opinion not prejudging any further consideration by the Working Group of a communication in the case on other grounds provided for in its methods of work; (b) if the Working Group considered that the arbitrary nature of the imminent detention had been established, it would render an opinion to that effect and make recommendations to the Government.

III. Thematic issues

A. Military justice

66. Once again, the Working Group notes the irregularity of judges who are under military command trying civilians.[2] The experience of the Working Group is that military tribunals are often used to deal with political opposition groups, journalists and human rights defenders The trial of civilians or decisions placing civilians in preventive detention by military courts are in violation of the International Covenant and customary international law as confirmed by the constant jurisprudence of the Working Group.

67. In the Working Group's view, there is an irreconcilable contradiction of values in the make-up of military courts, the main effect of which is not the denial of justice, but rather a direct injustice. One of the core values of a civilian judge is his or her independence, while the most appreciated value in a military official is exactly the opposite: his or her obedience to his or her superiors.

68. Therefore, as has been said by the Working Group, the intervention of a military judge who is neither professionally nor culturally independent is likely to produce an effect contrary to the enjoyment of the human rights and to a fair trial with due guarantees. The Working Group wishes to reiterate the human rights of accused persons, particularly their rights to be brought promptly before an independent and impartial judge; to be brought to trial in the shortest possible time; to be tried without undue delay; to challenge the lawfulness of their detention; to the presumption of innocence; to a public trial; to equality of arms between prosecution and defence; to access to evidence submitted by the prosecution; and other fundamental judicial guarantees of a fair trial. Supporters of military tribunals often insist on the urgency of swift justice and the need to maintain patriotic values. However, the Working Group notes that a court composed of a low-ranking soldier or other military personnel cannot be considered "a competent, independent and impartial tribunal", as defined under international human rights law

69. The Working Group has set out below certain minimum guarantees that military justice must not fail to respect:

(a) Military tribunals should only be competent to try military personnel for military offences;

(b) If civilians have also been indicted in a case, military tribunals should not try military personnel;

(c) Military courts should not try military personnel if any of the victims are civilians;

(d) Military tribunals should not be competent to consider cases of rebellion, the sedition or attacks against a democratic regime, since in those cases the victims are all citizens of the country concerned;

(e) Military tribunals should never be competent to impose the death penalty.

[2] See the following Working Group opinions: No. 20/2012 (Israel); No. 11/2012 (Egypt); No. 12/2012 (Egypt); No. 6/2012 (Bahrain); No. 3/2012 (Israel); No. 1/2012 (Egypt); No. 57/2011 (Egypt); No. 50/2011 (Egypt); No. 37/2011 (Syrian Arab Republic); No. 38/2011 (Syrian Arab Republic); No. 39/2011 (Syrian Arab Republic); No. 1/2011 (Syrian Arab Republic); No. 3/2011 (Egypt); No. 31/2010 (Bolivarian Republic of Venezuela); No. 32/2010 (Peru); No. 27/2010 (Syrian Arab Republic); No. 22/2010 (Egypt); No. 23/2010 (Myanmar); No. 13/2010 (Palestinian Authority); No. 9/2010 (Israel); No. 5/2010 (Israel).

70. The Working Group has found that justice done by the military in many instances falls into the five categories of arbitrariness identified in its methods of work.

(a) Category I: Military forces often stop and detain persons for a long time and military judges often order continuing detention in the absence of any legal basis;

(b) Category II: Many detainees brought before military courts have been detained simply for exercising a fundamental freedom, such as the freedom of opinion and expression, freedom of association, freedom of assembly or freedom of religion;

(c) Category III: Military judges and military prosecutors often do not meet the fundamental requirements of independence and impartiality; military procedures applied by military courts often do not respect the basic guarantees for a fair trial;

(d) Category IV: Individuals brought before military courts are often migrants in an irregular situation, asylum seekers and refugees captured by military forces at borders, at sea and in airports;

(e) Category V: Many people brought before military courts are foreign nationals coming from a country considered hostile to the country.

71. The Working Group recalls the draft principles on the administration of justice through military courts prepared by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/2006/58) and requests the Human Rights Council to proceed to their consideration with a view to adopting a set of principles to be applied to military courts.

B. Over-incarceration

72. While recognizing that States enjoy a wide margin of discretion in the choice of their penal policies, the right to liberty of persons in article 9 of the International Covenant on Civil and Political Rights requires that States should have recourse to deprivation of liberty only insofar as it is necessary to meet a pressing societal need, and in a manner proportionate to that need (E/CN.4/2006/7, para. 63). In a previous report (E/CN.4/2006/7) in 2006, the Working Group noted with concern the practice of over-incarceration in the context of pretrial detention, as well as the factors that lead to over-incarceration, including detainees' ethnic or social origin, poverty and social marginalization. During its country visits and communications, the Working Group has criticized the persistent pattern of overuse of detention in a number of countries, as well as the emergence of varying regimes in which over-incarceration occurs, such as preventive detention and the detention of asylum seekers and migrants in an irregular situation.

73. Many countries have seen an increasingly rapid rate of legislative response to criminal acts, and are now beginning to experience the combined effects of habitual offender laws, generally increased minimum sentences with less discretion available to judges in each individual case, and post-conviction preventive detention. In addition, hastily drafted legislation on detention for the purposes of extradition or immigration control and security detention has often not taken account of basic international law obligations. Regimes allowing indeterminate detention are on the increase. Domestic courts may provide constitutional review, and regional mechanisms such as the Inter-American and European human rights courts provide supervision.

74. The Working Group's country visits and communications clearly demonstrate that international supervisory mechanisms such as the Human Rights Committee and the relevant special procedures have an important task in the years ahead in reviewing the proportionality of detention in domestic legislation and practice. The Working Group has also identified best practice in complying with the proportionality requirement. The

universal periodic review process of the Human Rights Council and other State-to-State peer review and dialogue-based mechanisms are providing increasing assistance to States in their compliance with international law obligations.

1. Preventive detention

75. In a number of countries, the Working Group has observed the use of preventive detention. Convicted persons who have served their sentence may continue to be deprived of their liberty on the basis that their release would pose a danger to society (see, for example, A/HRC/7/4/Add.2 and A/HRC/19/57/Add.3). When a criminal sentence includes a punitive period followed by a preventive period, the International Covenant on Civil and Political Rights and customary international law, as confirmed by the reports and constant jurisprudence of the Working Group, require that once the punitive term of imprisonment has been served, the preventive detention must be proportionate and justified by compelling reasons. It must be subject to regular periodic review by a court or by an independent body subject to judicial review that must be able to determine the continued justification for the detention. Strong procedural guarantees must be provided for the evaluation of future danger, and the proportionality review is no less strict at that stage and demands stronger reasoning as time passes. Post-conviction preventive detention must be a measure of last resort. The conditions in preventive detention must be distinct from the conditions for convicted prisoners serving a punitive sentence and be aimed at rehabilitation and reintegration into society. If a prisoner has served the sentence imposed at the time of conviction, articles 9 and 15 of the Covenant and customary international law forbid a retroactive increase in sentence. Detention equivalent to penal imprisonment cannot be imposed as civil preventive detention or under any other label.

2. Detention of asylum seekers and irregular migrants

76. Some States have resorted to administrative detention of asylum seekers and irregular migrants (see, for example, A/HRC/13/30/Add.2 and A/HRC/10/21/Add.5). Law and policy vary from State to State, and asylum seekers and irregular migrants are at risk of arbitrary detention. They may be detained for several months or years, or even indefinitely, particularly in countries which have a policy of mandatory detention or do not prescribe a maximum period of detention. The imprisonment of a migrant or an asylum seeker for a prolonged period of time, in conditions that are sometimes found to be even worse than in the regular prisons, constitutes a punishment on a person who has not committed any crime (A/HRC/27/48/Add.2, para. 75).

77. Other international human rights mechanisms have similarly raised concerns about the excessive length of detention of migrants, the harsh conditions of their detention and the lack of procedural safeguards to ensure that detention is an appropriate and proportionate measure (A/68/261, para. 46). The Working Group reiterates that the detention of asylum seekers and irregular migrants should be a last resort and permissible only for the shortest period of time. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities, and should not take place in prisons. The inability of the authorities to carry out the expulsion of an individual can never justify indefinite detention.

C. Protective custody

78. The present section addresses the practice of keeping girls and women in detention for the purpose of protecting them from risks of serious violence. The Working Group has previously addressed in its annual report protective custody of women and girls who may be detained for life. That form of deprivation of liberty is highly gendered in its reach, remit and application. In some countries, women and girls are placed in custody due to the risk of

gender-based violence, such as honour crimes, and their release may be conditional upon the consent of a male relative and/or a guarantor (see A/HRC/20/16/Add.1).

79. There will typically be no legal basis for the detention, procedural guarantees will not be observed, and the detention will constitute discrimination. The Working Group recalls the views of the United Nations treaty bodies and the Special Rapporteur on violence against women, its causes and consequences, that the practice of protective custody should be eliminated and replaced with alternative measures ensuring the protection of women without jeopardizing their liberty.[3]

IV. Conclusions

80. The Working Group, in the fulfilment of its mandate, welcomes the cooperation it has received from States with regard to the responses by the Governments concerned concerning cases brought to their attention under its regular procedure. In 2013, the Working Group adopted 60 opinions concerning 431 persons in 39 countries. It also sent 110 urgent appeals to 37 countries concerning 680 persons.

81. The Working Group welcomes the invitations extended to it to pay official visits to countries. The Working Group conducted official visits in 2013 to Brazil, Greece, Hungary and Morocco. In response to its requests to visit countries, the Working Group has received invitations from the Governments of Argentina (for a follow-up visit), Azerbaijan, Burkina Faso, Germany, India, Italy, Japan, Libya, Malta, Nauru, Spain and the United States of America. It has also requested to be invited to an additional 16 countries. The Working Group reiterates its belief that its country visits are essential for the fulfilment of its mandate. For Governments, the visits provide an excellent opportunity to show developments and progress in ensuring respect for human rights, including the crucial right not to be arbitrarily deprived of liberty.

82. The Working Group reiterates that timely responses to its letters of allegations under its regular procedure with full disclosure from Member States furthers the cause of objectivity in the rendering of the Working Group's opinions. The Working Group regrets that, in some cases, Governments do not provide responses, or limit their replies to general information or merely affirm the non-existence of arbitrary detention in the country or refer to the constitutional norms preventing arbitrary detention from occurring, without making direct reference to the specific allegations transmitted.

83. In its deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44, sect. III), the Working Group restated its constant jurisprudence on the prohibition of all forms of arbitrary deprivation of liberty, and demonstrated that it is general practice accepted as law, constituting customary international law and a peremptory norm (*jus cogens*). The prohibition of arbitrariness in the deprivation of liberty requires a strict review of the lawfulness, necessity and proportionality of any measure depriving anyone of their liberty, which can arise at any stage of legal proceedings. The prohibition of arbitrary deprivation of liberty applies without territorial limitations, both with

[3] See, e.g., concluding observations of the Committee against Torture: Jordan, CAT/C/JOR/CO/2; concluding comments of the Committee on the Elimination of All Forms of Discrimination against Women: Jordan, CEDAW/C/JOR/CO/4; concluding observations of the Committee on the Rights of the Child: Jordan, CRC/C/15/Add.125; report of the Special Rapporteur on violence against women, its causes and consequences, mission to Jordan, A/HRC/20/16/Add.1.

respect to the duties on States where they have effective control and to acts by their agents abroad. International law does not accept "act of state" limitations on human rights obligations. In the interactive dialogue at the twenty-second session of the Human Rights Council, States gave general support for the conclusions of the deliberation. In its resolution 20/16, the Council encouraged all States to respect and promote the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful, in accordance with their international obligations, and requested the Working Group to prepare and present to it before the end of 2015 draft basic principles and guidelines on remedies and procedures relating to that right, with the aim of assisting Member States in complying therewith. Deliberation No. 9 has been cited as one source on the approach to identification of customary international law by Sir Michael Wood in his first (A/CN.4/663, para. 53) and second reports (A/CN.4/672, paras 41.8 and 76.6) on formation and evidence of customary international law submitted to the International Law Commission.

84. The Working Group has prepared a specific report on national, regional and international laws, regulations and practices on the right to challenge the lawfulness of detention before a court (A/HRC/27/47) and will hold a consultation with stakeholders on 1 and 2 September 2014 to solicit input on the draft basic principles and guidelines, with a view to presenting them to the Human Rights Council in 2015.

85. Judges should always be independent and impartial. In contrast, two of the core values of a military officer are obedience and loyalty to her or his supervisors. Under international law, military tribunals can only be competent to try military personnel for military offences.

86. Military courts should not try military officers if civilians have also been indicted in the case and if civilians are among the victims. All sentences issued by military courts should be reviewed by a civil court, even if they have not been appealed. Military courts should never be competent to impose the death penalty.

V. Recommendations

87. The Working Group recommends that States:

(a) Enforce and protect the right to liberty of every human being under customary international law;

(b) Ensure that the guarantees available against arbitrary arrest and detention are extended to all forms of deprivation of liberty, including house arrest; re-education through labour; prolonged periods of curfew; detention of migrants and asylum seekers; protective custody; detention for rehabilitation or treatment; detention in transit areas; and border control checkpoints;

(c) Ensure that persons are not held in pretrial detention for periods longer than those prescribed by law or proportionate, and that they are promptly brought before a judge;

(d) Remedy arbitrary detention, mainly by immediate release and compensation as required by international human rights conventions and customary international law, and assist the Working Group in the follow-up to its opinions in individual cases.

88. **All measures of detention should be justified, adequate, necessary and proportional to the aim sought.**

89. **All persons subjected to a measure of detention should benefit at all stages from access to a lawyer of her or his choice and to effective legal assistance and representation.**

90. **All detainees should benefit from all minimum procedural guarantees, including the principle of equality of arms; the provision of adequate time and facilities for the preparation of the defence; proper access to evidence; and guarantees against self-incrimination.**

91. **The practice of protective custody should be eliminated and replaced with alternative measures that ensure the protection of women and girls without jeopardizing their liberty. As part of efforts to achieve that end, awareness should be raised regarding the practice of protective custody. The Working Group encourages States, civil society organizations and other stakeholders to submit to the Working Group information on how frequently that practice occurs.**

92. **The Working Group requests the Human Rights Council to consider the adoption of a set of principles to be applied to military courts.**

93. **The Working Group recommends that States ensure that preventive detention must comply with international law and be proportionate and justified by compelling reasons, and is subject to regular periodic review by an independent judicial body.**

94. **Detention of asylum seekers and irregular migrants shall be a last resort and permissible only for the shortest period of time. Alternatives to detention should be sought whenever possible and the legality of detention must be open to challenge before a court and subject to regular review within fixed time limits.**